UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re: Case No.: 8:16-bk-07009-CPM
Chapter 7

Marc Franceski

Debtor.
____

CORRECTIVE MOTION TO SELL REAL PROPERTY AND PAY SECURED CREDITORS
(4207 Placid Drive, Sarasota, Florida 34243)

NOTICE OF OPPORTUNITY TO OBJECT AND REQUEST A HEARING

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within 21 days from the date set forth on the attached proof of service, plus an additional three days for service if any party was served by U.S. Mail. If you object to the relief requested in this paper, you must file a response with the Clerk of the Court at 801 N. Florida Ave., Suite 555, Tampa, FL 33602-3899 and serve a copy on the movant's attorney, Richard M. Dauval, 3900 1st Street North, Suite 100, Saint Petersburg, FL 33703, and any other appropriate persons within the time allowed.

If you file and serve a response within the time permitted, the Court will either schedule and notify you of a hearing, or consider the response and grant or deny the relief requested without a hearing.

If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

COMES NOW Beth Ann Scharrer, Chapter 7 Trustee, by and through her undersigned counsel, and hereby moves for authority to sell certain improved real property, to pay secured creditors, and in support thereof states as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334.This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b) (2) (A), (M), (N) and (O).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The basis for the relief requested herein are, *inter alia*, 11 U.S.C. §§ 105, 363(b) and Federal Rules of Bankruptcy Procedure 2002 and 6004.

BACKGROUND

4. On August 15, 2016, the Debtors commenced this case by filing a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code (the "Petition Date").
5. Beth Ann Scharrer was appointed Chapter 7 trustee (the "Trustee").
6. The Debtors own real property, by virtue of a deed, located at 4207 Placid Drive, Sarasota, Florida 34243, more particularly known as:

Lot 18, Treetops at North Forty - Placid, a land condominium according to the Declaration of Condominium recorded in Official Records Book 1347, Pages 2279 through 2341, inclusive, as amended, and according to the plat thereof recorded in Condominium Book 26, Pages 75 through 77, inclusive, as amended, of the Public Records of Manatee County, Florida. (the "Property").

7. The Trustee completed a title search and found that the Property is encumbered by a mortgage lien. By priority, but not including any outstanding property taxes or municipal liens, the Property is encumbered as follows:
   a. a first mortgage executed by Marc Franceski, in favor of Mortgage Electronic Registration Systems, Inc., acting solely as a nominee for Sentinel Mortgage Company, given to secure the original principal sum of $126,450.00, dated May 27, 2008 and recorded in Official Records Book 2260, Page 7552, of the Public Records of Manatee County, Florida; as last assigned to Federal National Mortgage

Association, it's successors and assigns by instrument recorded in Official Records Book 2569, Page 5916, of the Public Records of Manatee County, Florida. This mortgage is now serviced by Seterus (the "Secured Creditor" or "Seterus").

b. The Property is further encumbered by a Lis Pendens recorded in Official Records Book 2565, Page 5373 of the Public Records of Manatee County, Florida and a Final Judgement of Foreclosure in Case No. 2015-CA-001882 recorded in Official Records Book 2629, Page 3360, of said records. The Lis Pendens and Final Judgment of Foreclosure were recorded in an effort to enforce the mortgage rights of Seterus.

c. The Property is also encumbered by outstanding assessments due to a home owners association. Specifically, Treetops at North Forty - Placid, Homeowners Association, Inc. The intent is to pay these assessments in full as due and owing at the time of closing the sale of the Property or other amount agreeable to the home owners association.

8. The Trustee has accepted an offer from Salezky Izquierdo, a single man, (the Buyer) to purchase this home in the amount of $183,500.00, as payment in full (subject to Court and Lienholder approval). The current offer was not the only offer on the Property but is the highest offer. Moreover, the estate believes it is a fair offer for the current economy and the length the property has remained on the market.

9. Any current real property taxes will be paid prorated.

10. The sale price of $183,500.00, net the closing costs will be enough to satisfy the outstanding liens, as agreed to by the lienholder(s), that encumber the property and net the estate at least $5,766.95 (an escrowed surplus or other surplus amounts shall be

turned over to the bankruptcy estate). If the affected lienholders no longer consent to their proposed treatment they are hereby on notice that they need to object to the proposed sale of the Property.

11. The Trustee has attached a "DRAFT" Settlement Statement that outlines the proposed distribution of the sale proceeds at closing, as Exhibit "A."

AUTHORITY TO SELL

12. Pursuant to § 363(b)(1) of the Bankruptcy Code, a trustee, after notice and hearing, may use, sell or lease property of the estate other than in the ordinary course of business. Additionally, pursuant to § 363(f) of the Bankruptcy Code, the trustee may sell property free and clear of any interest in such property of an entity other than the estate if (i) permitted under applicable non-bankruptcy law, (ii) the party asserting such interest consents, (iii) the interest is a lien and the purchase price of the property is greater than the aggregate amount of all liens on the property, (iv) the interest is subject of a bona fide dispute, or (v) the party asserting the interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest.

13. Section 363(f) of the Bankruptcy Code is stated in the disjunctive. Thus, it is only necessary for the Trustee to satisfy one of the five conditions of § 363(f).

14. The Trustee avers that he shall satisfy section 363(f) (2) insofar as all lien holders shall consent to a sale of the property under section 363(f) (2), and that he should then be authorized to sell the Property free and clear of all liens, claims, encumbrances and interests.

CONCLUSION

15. The Trustee, in the exercise of his business judgment, believes, and therefore avers, that the proposed sale is in the best interest of the creditors of the bankruptcy estate insofar as there is otherwise no equity in the Property, the Trustee is more familiar with the current market than other interested parties, and a sale under this motion serves the best interest of all interested parties, including the secured creditors. The Buyer has agreed, subject to Court approval, to pay to the Trustee the sum of $183,500.00 in exchange for the Property free and clear of all liens, encumbrances, or interests.

WHEREFORE, the Trustee moves for the entry of an Order substantially in the form attached hereto:

A. Authorizing the sale of the Property and,

B. Authorizing the Trustee to take any all actions and to execute any and all documents necessary and appropriate to effectuate and consummate the terms of said sale of the Property free and clear of all liens, encumbrances, or interests, including without limitation, executing a deed conveying the interests of the Debtor or any other party claiming an interest in the Property to the Purchaser;

C. Authorizing the Trustee and any escrow agent upon the Trustee's written instruction, shall be authorized to make such disbursements on or after the closing of the sale as are required by the purchase agreement or order of this Court, including, but not limited to, (a) all delinquent real property taxes and outstanding post-petition real property taxes pro-rated as of the closing with respect to the real property included among the purchased assets (b) any outstanding Home Owner's Association fee or assessment arrearages; and (c) other anticipated closing costs:

Total Sales/Brokers Commission:	
6% to Remax Paramount Properties	$11,010.00

Title Charges:	$ 2,243.50
Government recording / transfer charges:	$ 1,284.50
Other / Debits	$ 125.00
(*incl. Municipal Lien Certificate Fee*)	
Satisfaction of Liens:	
Seterus (home mortgage)	$ 161,230.71
Home Owners Association Dues and Estoppel Letter	$ 1,686.50

The above anticipated closing costs and taxes are subject to per diem charges, changes in prorations, and otherwise represent approximate amounts. The Trustee seeks authority to pay these amounts, or their reasonable equivalent amounts, to the respective payees depending on the subjective per diem alteration.

D. Determining that the Buyer has not assumed any liabilities of the Debtors, and

E. Granting the Trustee such other and further relief as is just and proper.

Respectfully submitted,

/s/ Richard M. Dauval, Esquire

Richard M. Dauval, Esq.
Leavengood, Dauval, Boyle & Meyer, P.A.
3900 1st Street North, Suite 100
Saint Petersburg, FL 33703
727-327-3328 x303

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by U.S. Mail and/or electronic delivery to:
Lien Holders: Seterus, Inc c/o Scott Weiss, Esquire, Scott.Weiss@clegalgroup.com; The Treetops at North Forty HOA, 4301 32nd Street West, Suite A20, Bradenton, FL 34202-2794
Debtor, Marc Franceski, 1629 Flamingo Blvd., Bradenton, FL 34207
Debtor's Counsel, Todd R. Perkins, Esq., perkinslawgroup@yahoo.com
Chapter 7 Trustee, Beth Ann Scharrer, bscharrertrustee@gmail.com
United States Trustee, ustp.region21.ecf@usdoj.gov

and all parties of interest on the Matrix this March 2, 2017.

/s/ Richard M. Dauval, Esquire
Richard M. Dauval, Esq.

Label Matrix for local noticing
113A-8
Case 8:16-bk-07009-CPM
Middle District of Florida
Tampa
Thu Mar 2 09:22:36 EST 2017

BK Global Real Estate Services
I/C/O Stephanie Givens
2000 E Lamar Blvd, Ste 155
Arlington, TX 76006-7337

Marc Franceski
1629 Flamigo Blvd.
Bradenton, FL 34207-4600

Ken Burton Jr., Manatee County Tax Collector
c/o Michelle Leeson
4333 US 301 N
Ellenton, FL 34222-2413

Scott R. Weiss, Esq. Seterus, Inc. As The Au
Choice Legal Group, P.A.
P.O. Box 9908
Fort Lauderdale, FL 33310-0908

Brighthouse Networks
POB 30765
Tampa, FL 33630-3765

Calvary Portfolio Service
P.O. Box 27288
Tempe, AZ 85285-7288

Capital One Bank USA NA
P.O.Box 30281
Salt Lake City, UT 84130-0281

Cavalry Portfolio Service
500 Summit Lake Drive
Suite 400
Valhalla, NY 10595-2322

Credit Protection
One Galleria Tower
13355 Noel Road, Suite 2100
Dallas, TX 75240-6837

Enhance Recovery
3014 Bayberry Road
Jacksonville, FL 32256

Enhanced Recovery Company
P.O. Box 57547
Jacksonville, FL 32241-7547

Federal National Mortgage
14523 SW Milikan Way
Ste 200
Beaverton, OR 97005-2352

Federal National Mortgage
Association
P.O. Box 4121
Beaverton, OR 97076-4121

GE Capital Retail Bank
PO Box 965004
Orlando, FL 32896-5004

Internal Revenue Service
Post Office Box 7346
Philadelphia PA 19101-7346

James Patrick Collum III
Aldridge Pite, LLP
1615 South Congress Avenue
Suite 200
Delray Beach, FL 33445-6326

Kohl/Capone
PO Box 3115
Milwaukee, WI 53201-3115

Kohls
North 56 West
17000 Ridgewood Dr.
Menomonee Falls, WI 53051

Kohls Department Store
P.O. Box 3115
Milwaukee, WI 53201-3115

Mary R. Hawk, Esquire
Porges, Hamlin, Knowles &
Hawk, P.A.
P.O. Box 9320
Bradenton, FL 34206-9320

Ocwen Loan Servicing
1661 Worthington Road
Suite 100
West Palm Beach, FL 33409-6493

Pinnacle Credit Services
P.O. Box 640
Hopkins, MN 55343-0640

SYNCB/Toys R Us
4125 Windward Pz
Alpharetta, GA 30005-8738

SYNCB/Toys R Us
P.O. Box 965005
Orlando, FL 32896-5005

Sentinel Mortgage Company
1819 Main Street, Suite 201
Sarasota, FL 34236-5993

Seterus
P.O. Box 1077
Hartford, CT 06143-1077

Sprint
PO Box 105243
Atlanta, GA 30348-5243

The Bureaus
650 Dundee Road, Suite 370
Northbrook, IL 60062-2757

The Bureaus, Inc.
1717 Central Street
Evanston, IL 60201-1507

The Treetops at North Forty
Homeowners' Association, Inc
4301 32nd Strret West
Suite A20
Bradenton, FL 34205-2794

Treetops at North Forty
Homeowners' Association, Inc
4301 32nd Street West,
Suite A20
Bradenton, FL 34205-2794

Verizon Wireless
PO Box 105378
Atlanta, GA 30348-5378

Beth Ann Scharrer +
Trustee
PO Box 4550
Seminole, FL 33775-4550

Scott R Weiss +
Choice Legal Group, PA
PO Box 9908
Ft Lauderdale, FL 33310-0908

United States Trustee - TPA7/13 +
Timberlake Annex, Suite 1200
501 E Polk Street
Tampa, FL 33602-3949

Todd R Perkins +
Perkins Law Group
6703 14th Street West, Suite 212
Bradenton, FL 34207-5837

Richard M Dauval, Attorney for Trustee +
LeavenLaw
3900 First Street North, Suite 100
St. Petersburg, FL 33703-6109

Note: Entries with a '+' at the end of the name have an email address on file in CMECF

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Catherine Peek McEwen
Tampa

(u)Remax Paramount Properties

End of Label Matrix	
Mailable recipients	38
Bypassed recipients	2
Total	40

American Land Title Association ALTA Settlement Statement - Combined

Adopted 05-01-2015

FileNo./Escrow No.: 17-044
Print Date & Time: 2/21/2017 @ 2:17 PM
Officer/Escrow Officer: Marlene Benner
Settlement Location:
605 E. Robinson Street #720
Orlando, Florida 32801

Prominence Title & Escrow, LLC

605 E. Robinson Street #720
Orlando, Florida 32801

Property Address: 4207 Placid Drive, Sarasota, Florida 34243
Buyer: Salezky Izquierdo, a single man
Seller: Marc Franceski, subject to Bankruptcy Proceeding under case # 16-07009 in the Middle District of Florida
Lender: United Wholesale Mortgage

Settlement Date: 3/31/2017
Disbursement Date: / /
Additional dates per state requirements:

Seller		Description	Borrower/Buyer	
Debit	**Credit**		**Debit**	**Credit**
		Financial		
	$183,500.00	Sales Price of Property	$183,500.00	
		Loan Amount		$146,800.00
		Prorations/Adjustments		
	$75.00	NON-Ad Valorem from 3/31/2017 to 9/30/2017	$75.00	
$227.84		County Taxes from 1/1/2017 to 3/30/2017		$227.84
		Title Charges & Escrow / Settlement Charges		
		Title - Endorsement 5.1 to Prominence Title & Escrow, LLC	$35.00	
		Title - Endorsement 8.1 to Prominence Title & Escrow, LLC	$35.00	
		Title - Endorsement FL Form 9 to Prominence Title & Escrow, LLC	$124.25	
		Title - Lender's Coverage Premium to Prominence Title & Escrow, LLC	$809.00	
$433.50		Title - Owner's Coverage Premium (Optional) to Prominence Title & Escrow, LLC		
$1,750.00		Title - Settlement Fee to Prominence Title & Escrow, LLC	$550.00	
$60.00		Title - Title Search Fee to Westcor Land Title Insurance Company		
		Commission		
$11,010.00		Real Estate Commission (Seller) to RE/MAX Paramount Properties		
		Government Recording & Transfer Charges		
		Recording Fees to Simplifile	$224.00	
		E-Recording Fees to Simplifile	$14.50	
		Record Court Approval to Sell to Simplifile	$45.00	

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$1,284.50		Transfer Taxes - Deed State to Simplifile		
		Transfer Taxes - Intangible Tax to Clerk of the Circuit Court	$293.60	
		Transfer Taxes - Mortgage State to Clerk of the Circuit Court	$513.80	
		Payoff(s)		
$161,230.71		Lender: TBD		
		Principal Balance ($161,230.71)		
		Interest on Payoff Loan ()		
		Miscellaneous		
		2016 Real Property Taxes PAID 11/30/16 to Manatee County Tax Collector (POC by Seller: $1,083.17)		
$5,766.95		Bankruptcy Estate Fee to Beth Ann Scharrer, BK Trustee for the Estate of Marc Franceski		
		E-Recording Fee to Simplifile	$9.00	
$1,436.50		HOA Dues to HOA		
$250.00		HOA Estoppel Fee to Elite Property Research		
		HOA Transfer Fee to HOA	$50.00	
$125.00		Municipal Lien Certificate Fee to Elite Property Research		

Seller		**Description**	**Borrower/Buyer**	
Debit	**Credit**		**Debit**	**Credit**
$183,575.00	$183,575.00	**Subtotals**	$186,278.15	$147,027.84
		Due From Borrower	$39,250.31	
		Due From Seller		

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Acknowledgement
We/I have carefully reviewed the ALTA Settlement Statement and find it to be a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction and further certify that I have received a copy of the ALTA Settlement Statement. We/I authorize Prominence Title & Escrow, LLC to cause the funds to be disbursed in accordance with this statement.

Borrower: ______________________________ Seller: ______________________________
Salezky Izquierdo Marc Franceski

I have reviewed the Closing Disclosure, the settlement statement, the lender's closing instructions and any and all other forms relative to the escrow funds, including any disclosure of the Florida title insurance premiums being paid, and I agree to disburse the escrow funds in accordance with the terms of this transaction and Florida law.

____
Escrow Officer

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